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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 2223/2013 & I.A. 18257/2013, I.A. 18981/2013, I.A. 19439/2013, I.A. 4408/2014, I.A. 11701/2014, I.A. 14676/2014, I.A. 3114/2015, I.A. 9434/2015, I.A. 9564/2016

AARSHIYA GULATI (MINOR) THR.

NEXT FRIEND & ORS

..... Plaintiffs

Through Mr. T.K. Ganju, Senior Advocate
with Mr. Divyanshu Goyal and Ms.
Swati Jain, Advocates as well as
Ms. Divya Gulati in person.

versus

KULDEEP SINGH GULATI & ORS

..... Defendants

Through Mr. V.K. Bali, Senior Advocate with
Mr. Aditya Soni, Advocate for D-1, 2
and 5.
Mr. A.K. Singh, Advocate for D-3.
Mr. Mudit Gupta, Advocate for D-4.

Reserved On : 21st December, 2018

Date of Decision: 04th February, 2019

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CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

I.A. 4780/2014

1. Present application being I.A. 4780/2014 has been filed under Order 7 Rule 11 CPC on behalf of the defendants No.1, 2 and 5 for rejection of the plaint filed by the minor plaintiffs through their mother.

2. It is pertinent to mention that the present suit has been filed seeking partition, rendition of accounts and permanent injunction against their grandparents i.e. defendants No.1 and 5 as well as their father (defendant No.4) and aunt and uncle i.e. defendants No.2 and 3.

3. The learned Predecessor of this Court vide ex parte ad interim order dated 02nd December, 2013, directed the defendants to maintain status quo with regard to suit property bearing No.C-117, East of Kailash, New Delhi-110065 as regards possession and title. On 27th September, 2018, this Court clarified that it had not granted any stay of proceedings in Appeal No.30/2013 i.e. Kuldeep Singh Gulati and Anr. Vs. Sandeep Gulati & Anr. pending under the Maintenance and Welfare of Parents and Senior Citizens Act, 2017 before the Divisional Commissioner and the said forum was free to proceed with the case, in the event there was no stay order passed by any other Court.

ARGUMENTS ON BEHALF OF THE DEFENDANTS NO.1, 2 AND 5

4. At the outset, Mr. V.K. Bali, learned senior counsel for defendant No.1, 2 and 5-applicants, submitted that the present suit was not maintainable as an identical suit of the father of plaintiffs being CS(OS) 886/2013 with the same averments and seeking the same relief, after hearing arguments on the very first date of hearing, had been dismissed as withdrawn with liberty to file other proceedings that may be permissible. The order dated 13th May, 2013 is reproduced hereinbelow:-

“Present suit has been filed for partition, rendition of accounts and permanent injunction.

As this Court after hearing some arguments was of the view that present suit for partition was not maintainable, Mr. Bhupesh Narula, learned counsel for the plaintiff wishes to withdraw the present suit with liberty to avail other appropriate remedies that may be available to the plaintiff in accordance with law.

With the aforesaid liberty, present suit and applications are dismissed as withdrawn.”

5. Mr. Bali stated that since the plaintiffs i.e. children of the defendant No. 4 derive their title from their father, if defendant No. 4 can file proceedings other than the partition suit, then his children who derive title from him, cannot file a partition suit.

6. He pointed out that the father of the plaintiffs i.e. defendant No.4 (Mr. Sandeep Gulati) had been involved in a murder case at the age of sixteen and the present suit had been filed by him through his two minor children from the third wife and that too without seeking any claim/share for his son from the first wife.

7. Learned senior counsel for defendants No.1, 2 and 5 stated that in 1947, late Sh. R.P. Gulati had migrated from Pakistan to India with his family members leaving behind all their belongings. He pointed out that while migrating to India all the family members were searched and they were not allowed to carry anything. He emphasized that late Sh. R.P. Gulati had arrived in India along with his family members with only the clothes which they were wearing, and thus it was very hard for him even to meet the basic needs of the family and due to the same, his eldest son Sh. D.L. Gulati, who was sixteen years of age at that time started working.

8. Mr. Bali stated that at the time of death of Sh. R.P. Gulati in 1971, he had no business and he was fully dependent upon his children, and therefore, no property or business was left by late Sh. R.P. Gulati. He contended that the question of inheriting any family business or coparcenary business did not arise. He showed an extract of the passbook of Mr. R.P. Gulati, which showed a balance of just Rs.4.15/- in August, 1970. He also referred to the Central Govt. Health Scheme Card of Sh. R.L. Gulati, son of late Sh. R.P. Gulati to show that he was dependant on his son for his own medical treatment.

9. Learned senior counsel for defendants No.1, 2 and 5-applicants contended that there was no averment in the plaint that Mr. R.P. Gulati, great grandfather of the plaintiffs, had succeeded to any property on demise of his father. He pointed out that there was not even a whisper in the plaint as to what properties were owned by the father of Mr. R.P. Gulati or even by Mr. R.P. Gulati himself. He emphasized that no details of any business or property being inherited by defendant No.1 on the death of Mr. R.P. Gulati had been mentioned in the plaint.

10. Mr. Bali submitted that coparcenary is a creation of law and cannot be created by an act of the parties. He pointed out that in the present case there was no coparcenary property specified or even named and no averment with regard to the hotchpotch or actual blending of properties by the parties. According to him, the only averments in the plaint were with regard to blending of income from salaries. He stated that all the three partnership firms mentioned in the plaint as businesses of the coparcenary had been formed after the death of Mr. R.P. Gulati in 1971.

11. In the alternative, Mr. Bali submitted that even if it was assumed that coparcenary/Hindu Undivided Family properties were in existence, no coparcenary survived in the present case as, according to the plaintiffs themselves, there had been four partitions. He pointed out that upon separation of two brothers of defendant No.1 there was a partition in 1971 and upon separation of third brother, there was another partition in September, 1974. Further, three brothers of defendant No.1 separated in April, 1989 and one son of the defendant No.1 separated and moved to Canada on 17th March, 2004.

12. According to him, when partition of a coparcenary takes place and shares of the members get ascertained, the coparcenary dissolves and thereafter any branch wise division/partition/sub-division is not permissible under Hindu law.

13. Learned senior counsel for defendants No.1, 2 and 5-applicants stated that the dispute in the present case is primarily with regard to a house situated at C-117, East of Kailash, New Delhi. He stated that the said house was purchased and is owned by defendant No.5, grandmother of the plaintiffs. In support of his contention, he relied upon the Agreement to Sell dated 06th May, 1978 as well as the receipt and Conveyance Deed dated 14th October, 1996.

14. He submitted that defendant No.5 being a female could not be a coparcener prior to 2005. He pointed out that it was the plaintiffs' own case that shares of males in 1989 partition were ascertained and no share was given to the females as they were not entitled to the same.

15. Mr. Bali contended that the plaintiffs have admitted to there being no Hindu Joint Family or Hindu Joint Family properties in the Memorandum of

Settlement dated 17th March, 2004. He pointed out that by way of amendment application, the plaintiffs had partially challenged the said Memorandum of Settlement only to the extent that it affected their rights. He submitted that the plaintiffs cannot challenge it in a piecemeal manner. He stated that if the said family settlement was set aside, it would mean that Mr. Manit Gulati's (defendant No.3) separation would have to be set aside in its entirety.

16. He further submitted that the challenge to the said Memorandum of Settlement was beyond limitation and in support of his submission, he relied upon Section 7, Explanation II of the Limitation Act, 1963, which reads as under:-

“7. Disability of one of several persons.—Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation I.— This section applies to a discharge from every kind of liability, including a liability in respect of any immovable property.

Explanation II.— For the purposes of this section, the manager of a Hindu undivided family governed by the Mitakshara law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint family property.

17. Learned senior counsel for defendants No.1, 2 and 5-applicants submitted that a suit for injunction against the Karta i.e. defendant No.1 is barred by provisions of Specific Relief Act, 1963 and no injunction could be passed against the Karta of a Hindu coparcenary as Karta is entitled to exclusive and entire possession.

18. Mr. Bali stated that the balance of convenience was entirely in favour of the defendants No.1, 2 and 5. He emphasised that Mr. Sandeep Gulati, father of the plaintiffs was in the possession of all cars of the family as well as the factory and warehouse which were yielding rental incomes. He contended that the mala fides of the plaintiffs would be apparent from the fact that defendant No. 4's business in China and house in Dwarka had not been made a part of the partition suit.

ARGUMENTS ON BEHALF OF PLAINTIFFS

19. Per contra, Mr. T.K. Ganju, learned senior counsel for plaintiffs submitted that despite the withdrawal of defendant No.4's suit being CS(OS) 886/2013, the present suit was maintainable as the right to demand partition and separate possession is a recurring right. In support of his submission, he relied upon the judgments of this Court in ***Sri Kishan Vs. Shri Ram Kishan & Ors., 2009 (110) DRJ 323*** and ***Jai Devi Vs. Jodhi Ram, 1970 LawSuit(Del) 82.***

20. He stated that prior to the disputes having arisen in 2010, the entire family i.e. the plaintiffs and the defendants were living together in the same house with a joint kitchen. He contended that the Family of defendant No.1 was a Hindu Joint Family as they had been joint in food, worship and estate. He submitted that there is a presumption in law that every Hindu family is a

Hindu Joint Family which is joint in food, worship and estate, unless there is proof to the contrary. In support of his submission, he relied upon the judgment of ***Sanwal Das Vs. Kuremal & Ors. AIR 1928 Lah. 224*** wherein it has been held, "*....The presumption of Hindu law is that every Hindu family is joint in food, worship and estate, and that a party who desires to establish the contrary must prove it....*"

21. Mr. Ganju emphasised that in the present case, the factum of existence of an HUF under the name of "K.S. Gulati and Sons HUF" was an admitted fact. In support of his contention, he referred to Kuldeep Singh Gulati and Sons HUF Pan card details along with acknowledgment from the Income Tax Department.

22. Mr. Ganju submitted that as soon as the defendant No.4 i.e. father of the minor plaintiffs was born in 1969, by operation of law, a coparcenary came into existence. In support of his submission, he relied upon the judgment of the Supreme Court in ***Rohit Chauhan Vs. Surinder Singh & Ors., (2013) 9 SCC 419*** wherein it has been held as under:-

"11.It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener."

(emphasis supplied)

23. Learned senior counsel for the plaintiffs submitted that the aforesaid judgment in ***Rohit Chauhan Vs. Surinder Singh & Ors.***(supra) had been

reiterated subsequently in *Danamma alias Suman Surpur & Anr. Vs. Amar & Ors.*, (2018) 3 SCC 343 and *Shyam Narayan Prasad Vs. Krishna Prasad & Ors.*, (2018) 7 SCC 646.

24. Mr. Ganju stated that after the great grandfather of the plaintiffs i.e. Mr. R.P. Gulati came from Pakistan in 1947, he got compensation from the Settlement Commission for the family properties left behind in Pakistan and with this compensation, he started a joint family business, being a shoe business in Lajpat Nagar, New Delhi. In support of his contention, he referred to the Income Tax Assessment order dated 31st March, 1986.

25. He further stated that after Mr. R.P. Gulati's death, the members of his family i.e. his sons amongst themselves, carried on family business under three partnership firms i.e. (i) M/s. Ofag International, (ii) M/s. Pishori Traders and (iii) M/s. Lloyd Steel, wherein Mrs. Surinder Gulati-defendant No.5 i.e. grandmother of the plaintiffs, represented the family group of K.S. Gulati and Sons, as Mr. K.S. Gulati was in Government service at that point in time.

26. Mr. Ganju contended that from the income derived from the three joint family partnership firms, the K.S. Gulati joint family purchased a plot of land bearing No.C-117, East of Kailash, in the name of Mrs. Surinder Gulati-defendant No.5.

27. Mr. Ganju contended that since in the present case, the plaintiffs had shown a nucleus from which the Hindu Joint Family properties had been acquired, there arose a presumption in law that such properties were Hindu Joint Family properties unless proved to the contrary by the person claiming it to be his self acquired property. In support of his submission, he relied

upon a judgment of the Supreme Court in ***Appasaheb Peerappa Chamdgade Vs. Devendra Peerappa Chamdgade & Ors., (2007) 1 SCC 521*** wherein it has been held as under:-

" 13.But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property. Therefore, so far as the proposition of law is concerned, the initial burden is on the person who claims that it was joint family property but after initial discharge of the burden, it shifts to the party who claims that the property has been purchased by him through his own source and not from the joint family nucleus...."

28. Mr. Ganju stated that even if it is presumed that the plaintiffs had failed to prove the existence of a nucleus, then also as, in the present instance, the father and the son had worked together and created income and acquired properties with the help of their joint labour and effort--the said income and properties would be Hindu Joint Family properties unless proved to the contrary by the cogent evidence. He stated that the fact that defendants No.1, 2 and 4 had been working together in the family businesses since attaining majority and had been taking active part in the business of K.S. Gulati and Sons Hindu Joint Family since 1990 had been admitted by the defendants in C.P. No.06/1993. The relevant portion of the said reply affidavit by defendant No.1 relied upon by the learned senior counsel for plaintiffs is reproduced hereinbelow:-

"H.Naturally, the wives were only tax fronts and actual business was conducted by the husbands. The answering

respondent looked after the technical side whereas the management of the various units was handled by his two brothers. Although the division of the shares of the Company amongst the three families was disproportionate, it was clearly understood that all the three had equal stakes therein like in the entire family business."

29. He contended that in view of the said fact, even the pre-existence of a nucleus was not necessary. In support of his submission, Mr. Ganju relied upon the following judgments:-

A. ***Sanwal Das Vs. Kuremal & Ors. AIR 1928 Lah. 224*** wherein it has been held as under:-

" In Laldas Naraindas Vs. Motibai (6), it was held that, where a father and his sons acquire their property by their joint labours and are besides joint in food and worship, they must be regarded as having constituted a joint hindu family even though there may have been no nucleus of property which has come down to the father from his father or grandfather or great-grandfather. For the formation of a coparcenary in Hindu law, such a nucleus is not absolutely necessary, provided the persons constituting it stand in relationship of father and son or other relationship requisite for a coparcenary system."

B. ***Madanlal (Dead) By LRs. & Ors. Vs. Yoga Bai (Dead) By LRs., (2003) 5 SCC 89***, wherein it has been held as under:

"4.Therefore, the High Court found that the question which was to be considered was as to whether the property acquired by the father and the sons by putting their efforts together in their family business would be amenable to partition at the instance of the sons or not. Referring to several decisions of different High Courts, namely, Bombay High Court, Oudh Chief Court, Madras High Court as well as the Andhra Pradesh High Court on the point, it came to the conclusion that the property in question was raised and developed by the joint efforts

of Purandas and his sons and therefore it was joint family property, amenable to partition among the father and sons etc. We do not find any flaw in the conclusion drawn by the High Court on the point enumerated above.

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6. It is sought to be established that they have been running their business separately under different partnerships. We feel that no such inference can be drawn. In a family which carries on a number of businesses, it is quite often that it is carried out under different names and styles and often constitutes different companies or partnerships for better handling of business or to keep it manageable or for various other reasons. It is no proof of separation nor are the letters which are sought to be relied upon, written to the Income Tax Authorities and the assessment orders passed by the Income Tax Authorities...."

30. Mr. Ganju submitted that the fact whether the thirteen properties claimed to be Hindu Joint Family properties were available for partition or not, was a question of fact which could be determined only after conducting a trial and not in an application under Order 7 Rule 11 CPC. In support of his submission, he relied upon the following judgments:-

A. ***Kamala & Ors. Vs. K.T. Eshwara Sa & Ors., (2008) 12 SCC 661*** wherein it has been held as under:-

"21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any

addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

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32. We may proceed on the assumption that the shares of the parties were defined. There was a partition amongst the parties in the sense that they could transfer their undivided share. What would, however, be the effect of a partition suit which had not been taken to its logical conclusion by getting the properties partitioned by metes and bounds is a question which, in our opinion, cannot be gone into in a proceeding under Order 7 Rule 11(d) of the Code. Whether any property is available for partition is itself a question of fact.

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37. What would be its effect is again a question which cannot fall for determination under Order 7 Rule 11(d) of the Code. These facts require adjudication. The identity of the properties which were the subject-matter of the earlier suit vis-à-vis the properties which were subsequently acquired and the effect thereof is beyond the purview of Order 7 Rule 11(d) of the Code.

38. Whether the properties mentioned in the plaint are available for partition is essentially a question of fact. Whether an order of injunction was obtained on the basis of a misleading statement in the earlier suit or whether they were entitled therefor are not the questions which, in our opinion, can be gone into at this stage. Moreover, it is contended that some lands have been acquired by

the Bangalore Development Authority. But, we do not know in whose favour the awards were made and even if somebody has received the awarded amount, what would be the effect thereof."

B. *Ms. Ilaria Kapur Vs. Sh. Rakesh Kapur & Ors., 2012 SCC OnLine Del 3115*, wherein it has been held as under:

"21. Before embarking upon the merits of the respective contentions of the parties, it deserves to be highlighted that the scope and ambit of Order VII Rule 11 of the Code of Civil Procedure is a cabined and limited one. As held in Kamala's case(supra), the conclusion that the suit is barred under any law must be drawn from the averments made in the plaint. Further, for invoking Rule 11(d) of Order VII, no amount of evidence can be looked into. The issues on the merits of the matter which may arise between the parties would not be within the realm of the Court at that stage nor shall form the subject matter of an order under the said provision, in the aforesaid decision which also pertains to a partition suit, it was observed (AIR, page No. 3179):—

"whether any property is available for partition is itself a question of fact."

22. In the case of Kamala (supra), a suit was filed claiming partition in the properties. After the passing of the preliminary decree, no property was available for partition. The properties were possessed by the co-sharers independently in accordance with the respective shares held by the co-sharers. Yet, the Supreme Court observed that what would be the effect of a partition suit which had not been taken to its logical conclusion by getting the properties partitioned by metes and bounds is a question which cannot be gone into in a proceeding under Order VII, Rule 11(d) of the Code. Whether any property is available for partition is itself a question of fact. Identity of properties which were subject matter of the earlier suit, vis-a-vis, properties which were subsequently acquired and effect thereof was beyond the purview of Order VII, Rule 11(d)."

31. Mr. Ganju lastly contended that the balance of convenience was entirely in favour of the plaintiffs. He stated that father of the plaintiffs had been acquitted in the murder case and, if the interim order was not continued, the plaintiffs would suffer irreparable loss and injury inasmuch as they may be ousted from the Hindu Joint Family properties in which they have a right and the same shall cause irreparable loss and injury to them.

REJOINDER ARGUMENTS ON BEHALF OF THE DEFENDANTS NO.1, 2 AND 5.

32. In rejoinder, Mr. Bali stated that the plaintiffs' submission that the parties were coparceners in a joint family property was predicated on a wrong assumption of law that property granted to an individual/displaced person at the time of partition retained the same characteristic of the property that was left by the displaced person/persons in Pakistan. He submitted that the property, if any, allotted in lieu of the property left in Pakistan under Displaced Persons (Compensation and Rehabilitation) Act, 1954 was a grant and consequently, a self-acquired property of defendant No.1.

33. Learned senior counsel for defendants No.1, 2 and 5 further submitted that the Lahore High Court in *Sanwal Das Vs. Kuremal & Ors.* (supra) erroneously held, by differing from three earlier judgments of the Lahore High Court, that when father and son work together, properties acquired would be Hindu Joint Family properties. He submitted that the Supreme Court in the following three judgements has held to the contrary :-

- i) ***Appasheb Peerappa Chamdgagde Vs. Devender Peerappa Chamdgade and Others, (2007) 1 SCC 521***

- ii) ***Mudi Gowda Gowdappa Sankh Vs. Ram Chandra Ravagowda Sankh, (1969) 1 SCC 386***
- iii) ***D.S. Lakshmaiah and Anr. Vs. I. Balasubramanyam and Anr., (2003) 10 SCC 310.***

34. Learned senior counsel for defendants No.1, 2 and 5 submitted that in a subsequent judgment of ***Uttam Vs. Saubhag Singh, (2016) 4 SCC 68***, it has been specifically held that ***Rohit Chauhan's*** (supra) judgment is not good law.

35. Mr. Bali further stated that there is no averment in the plaint to the effect that the grandfather (defendant No.1) and the father (defendant No.4) of the plaintiffs had worked together and created income and acquired properties with the help of their joint labour and effort.

36. Learned senior counsel for defendants No.1, 2 and 5 lastly contended that though the plaintiffs were aware of the reply to the company petition being Co.Pet.6/1993 prior to the institution of the suit, yet there was no averment in the plaint with regard to the Company Law Board proceeding. Consequently, he submitted that the said allegation cannot be examined by the Court while dealing with an Order 7 Rule 11 CPC application.

COURT'S REASONING

THE APPROACH TO BE ADOPTED BY THE COURTS WHILE DEALING WITH AN ORDER 7 RULE 11 CPC APPLICATION

37. Order 7 Rule 11 CPC lays down six grounds on which a plaint can be rejected. Though it is settled law that while deciding such an application what has to be seen are the averments made in the plaint, yet the *sine qua non* is that pleadings must contain all requisite factual ingredients of a cause

of action. This Court is of the view that it is the bounden duty and obligation of every court, while deciding an Order 7 Rule 11 CPC application, to carefully scrutinize the pleadings and the documents on which the pleadings are predicated. The Supreme Court has highlighted the requirement to read the pleadings meaningfully in view of the relied upon documents and see that the same are not illusory or vexatious. The Apex Court in ***T. Arivandandam Vs. T.V. Satyapal and Another, (1977) 4 SCC 467*** has held as under:-

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

“It is dangerous to be too good.”

(emphasis supplied)

38. The Supreme Court in ***I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others***, (1998) 2 SCC 70 has held as under:-

“16. The question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. (See T. Arivandandam v. T.V. Satyapal[(1977) 4 SCC 467].)”

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27. As stated above, non-movement of goods by the seller could be due to a variety of tenable or untenable reasons, the seller may be in breach of the contract but that by itself does not permit a plaintiff to use the word “fraud” in the plaint and get over any objections that may be raised by way of filing an application under Order 7 Rule 11 CPC. As pointed out by Krishna Iyer, J. in T. Arivandandam case [(1977) 4 SCC 467], the ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order 7 Rule 11(a). Inasmuch as the mere allegation of drawal of monies without movement of goods does not amount to a cause of action based on “fraud”, the Bank cannot take shelter under the words “fraud” or “misrepresentation” used in the plaint.”

(emphasis supplied)

39. Even, in ***Kamala & Ors. Vs. K.T. Eshwara Sa & Ors.*** (supra) as well as ***Ms. Ilaria Kapur Vs. Sh. Rakesh Kapur & Ors.*** (supra) it has been held that a plaint can be rejected under Order 7 Rule 11 CPC if the averments made in the plaint on their face disclose no cause of action and/or if the same disclose a cause of action, the same is barred by any law. In the judgments cited by learned senior counsel for the plaintiffs, the earlier

Supreme Court judgments in *T. Arivandandam Vs. T.V. Satyapal and Another* (supra) and *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others* (supra) have neither been set aside nor dissented or distinguished.

ORDER 6 RULE 4 CPC IS ATTRACTED TO SUITS WHERE THE PLAINTIFF CLAIMS THAT A COPARCENARY OR HUF EXISTS, AS AFTER COMING INTO FORCE OF THE HINDU SUCCESSION ACT, 1956, THERE IS NO PRESUMPTION AS TO THE EXISTENCE OF AN HUF.

40. A learned Single Judge of this Court in the case of *Surender Kumar Vs. Dhani Ram & Ors.* 227 (2016) DLT 217 has held that Order 6 Rule 4 CPC is attracted to suits where the plaintiff claims that a coparcenary or HUF exists, as after coming into force of the Hindu Succession Act, 1956 (hereinafter referred to as 'Act, 1956'), there is no presumption as to the existence of an HUF. Consequently, detailed facts have to be averred. The averments have to be made by factual references qua each property claimed to be an HUF property as to how the same is an HUF property. The relevant portion of the said judgment is reproduced hereinbelow:-

“9. I would like to further note that it is not enough to aver a mantra, so to say, in the plaint simply that a joint Hindu family or HUF exists. Detailed facts as required by Order 6 Rule 4, CPC as to when and how the HUF properties have become HUF properties must be clearly and categorically averred. Such averments have to be made by factual references qua each property claimed to be an HUF property as to how the same is an HUF property, and, in law generally bringing in any and every property as HUF property is incorrect as there is known tendency of litigants to include unnecessarily many properties as HUF properties, and which is done for less than honest motives. Whereas prior to passing of the Hindu Succession Act,

1956 there was a presumption as to the existence of an HUF and its properties, but after passing of the Hindu Succession Act, 1956 in view of the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhister (supra), there is no such presumption that inheritance of ancestral property creates an HUF, and therefore, in such a post 1956 scenario a mere ipse dixit statement in the plaint that an HUF and its properties exist is not a sufficient compliance of the legal requirement of creation or existence of HUF properties inasmuch as it is necessary for existence of an HUF and its properties that it must be specifically, stated that as to whether the HUF came into existence before 1956 or after 1956 and if so how and in what manner giving all requisite factual details. It is only in such circumstances where specific facts are mentioned to clearly plead a cause of action of existence of an HUF and its properties, can a suit then be filed and maintained by a person claiming to be a coparcener for partition of the HUF properties.”

(emphasis supplied)

41. A Division Bench of this Court in **Sagar Gambhir Vs. Sukhdev Singh Gambhir and Ors., 241 (2017) DLT 98** has endorsed the said view. The relevant portion of the Division Bench’s judgment is reproduced hereinbelow:-

“5. The defendants filed IA No. 1325/2012 invoking Order VII Rule 11 of the Code of Civil Procedure pleading that the averments in the plaint did not disclose a cause of action.

6. Vide impugned order dated May 06, 2016, relying upon the decision of the Supreme Court reported as (1987) 1 SCC 204Yudhihster v. Ashok Kumar, and two decisions of this Court reported as 225 (2015) DLT 211 Sunny (Minor) v. Sh. Raj Singh and 227 (2016) DLT 217 Surinder Kumar v. Dhani Ram the learned Single Judge has held that the pleadings were illusory and did not disclose a cause of action. The suit has been dismissed, and we treat this to be a misnomer for the reason if a

plaint does not disclose a cause of action it has to be rejected. Qua challenge to the will, the learned Single Judge has held that this would be a separate cause of action and a separate suit could be filed.

11.the Supreme Court laid emphasis that Courts must accord due attention to the pleadings, and in civil cases pertaining to property, must accord the necessary consideration to the admitted documents filed by the parties and highlighted that this care would prevent many a false claims from sailing beyond the stage of issues. In paragraph 73 to 79 of the opinion, the Supreme Court highlighted that suspicious pleadings, incomplete pleadings and pleadings not supported by documents would not even warrant issues to be settled. Thus, the said observations of the Supreme Court would be very relevant in the instant case.

15. The pleadings by the appellant is only to the effect that the property at Rajinder Nagar was purchased by the grandfather of the appellant from out of the funds of the firm M/s. Gian Singh Sukhdev Singh which was set up by the late grandfather of the appellant and that the funds for the business came from the properties left behind in Pakistan. No details or particulars of the properties left behind at Pakistan have been pleaded. We take judicial notice of the fact that post-partition, people who migrated to India from the territories of the newly State of Pakistan were required to file claims before the custodian of evacuee properties and upon proof of properties left behind in Pakistan, compensations were assessed. These people were treated as refugees and either money or an immovable property was allotted to these refugees by the Ministry of Rehabilitation, Government of India. In the plaint the lack of pleadings to said effect cannot be overlooked. There is thus a bald assertion without any material particulars regarding the firm M/s. Gian Singh Sukhdev Singh being set up by the great grandfather of the appellant. The appellant has himself filed documents, and one of which is an income-tax assessment order for the Assessment Year 1957-58 concerning the income-tax return of the defendant No. 1. The same shows that the business of M/s. Gian Singh Sukhdev

Singh was the sole proprietary business of defendant No. 1 and the source of funds to acquire the property in Rajinder Nagar was from the income generated from the firm. This document being filed by the appellant could be looked into by the learned Single Judge and the only error in the impugned order would be one of narrative of fact wherein said document has been referred to as relied upon by the defendants. It is a case where the appellant as well as the defendants relied upon the documents.”

(emphasis supplied)

THERE EXISTS A DISTINCTION BETWEEN A COPARCENARY PROPERTY AND A HINDU JOINT FAMILY PROPERTY.

42. A Mitakshara coparcenary is a body of individuals having been created by law, unlike a joint family which can be constituted by an agreement of parties. The Supreme Court in ***Hardeo Rai Vs. Sakuntala Devi and Others*, (2008) 7 SCC 46** has held as under:-

“19. We may at the outset notice the characteristics of a Mitakshara coparcenary from the decision of this Court whereupon Mr Rai has placed strong reliance being SBI v. Ghamandi Ram [(1969) 2 SCC 33 : AIR 1969 SC 1330]. Therein this Court was concerned with a notification issued by the Government of Pakistan in terms of Section 45 of the Pakistan (Administration of Evacuee Property) Ordinance, 1949. We may, however, notice the dicta laid down therein: (Ghamandi Ram case [(1969) 2 SCC 33 : AIR 1969 SC 1330] , SCC pp. 36-37, para 5)

“5. According to the Mitakshara School of Hindu Law all the property of a Hindu joint family is held in collective ownership by all the coparceners in a quasi-corporate capacity. The textual authority of the Mitakshara lays down in express terms that the joint family property is held in trust for the joint family members then living and thereafter to be born (see Mitakshara, Chapter I, pp. 1-27). The

incidents of coparcenership under the Mitakshara Law are: first, the lineal male descendants of a person up to the third generation, acquire on birth ownership in the ancestral properties of such person; secondly, that such descendants can at any time work out their rights by asking for partition; thirdly, that till partition each member has got ownership extending over the entire property conjointly with the rest; fourthly, that as a result of such co-ownership the possession and enjoyment of the properties is common; fifthly, that no alienation of the property is possible unless it be for necessity, without the concurrence of the coparceners, and sixthly, that the interest of a deceased member lapses on his death to the survivors. A coparcenary under the Mitakshara School is a creature of law and cannot arise by act of parties except insofar that on adoption the adopted son becomes a coparcener with his adoptive father as regards the ancestral properties of the latter.”

(emphasis supplied)

THERE IS A DIFFERENCE BETWEEN PARTNERSHIP AND HINDU JOINT FAMILY FIRM.

43. There is also a difference between partnership and Hindu Joint Family firm. Mulla in his Treatise Hindu Law 21st Edition has pointed out the following points of difference between partnership and Hindu Joint Family firm:-

“In a joint family business no member of the family can say that he is the owner of one-half, one-third or one-fourth. The essence of joint Hindu family property is unity of ownership and community of interest and the shares of the members are not defined”.

44. The Supreme Court in **Nanchand Gangaram Shetji Vs. Mallappa Mahalingappa Sadalge & Ors.; (1976) 2 SCC 429** has held as under:-

“37.....In a joint Hindu family business, no member of the family can say that he is the owner of one-half, one-third or one-fourth. The essence of joint Hindu family property is unity of ownership and community of interest, and the shares of the members are not defined. Similarly, the pattern of the accounts of a joint Hindu family business maintained by the karta is different from those of a partnership. In the case of the former the shares of the individual members in the profits and losses are not worked out, while they have to be worked out in the case of partnership accounts.”

(emphasis supplied)

45. Consequently, a partnership property cannot be a Hindu Joint Family Property.

THERE IS NO PRESUMPTION THAT A BUSINESS STANDING IN THE NAME OF ANY MEMBER OF THE JOINT FAMILY IS A JOINT FAMILY BUSINESS.

46. It is also settled law that there is no presumption that a business standing in the name of any member of the joint family is a joint family business. The Supreme Court in ***P.S.Sairam & Anr. Vs. P.S.Rama Rao Pissey & Ors. (2004) 11 SCC 320*** has held as under:-

“7. Crucial question in the present appeal is as to whether business which was conducted by defendant No.1 was his separate business or it belonged to joint family, consisting of himself and his sons. It is well settled that so far as immovable property is concerned, in case the same stands in the name of individual member, there would be a presumption that the same belongs to joint family, provided it is proved that the joint family had sufficient nucleus at the time of its acquisition, but no such presumption can be applied to business. Reference in this connection may be made to a decision of this Court in the case of *G.Narayana Raju v.G.Chamaraju*:AIR 1968 SC 1276 wherein in a suit for partition defence was taken that business of Ambika Stores was separate

business of defendant as the business did not grow out of joint family funds or at least by efforts of members of joint family which was accepted by the trial court as well as the High Court. When the matter was brought to this Court in appeal, upholding the judgment of the High Court, the Court observed thus at page 466:- (AIR p. 1278, para 3)

"It is well established that there is no presumption under Hindu Law that a business standing in the name of any member of the joint family is a joint family business even if that member is the manager of the joint family. Unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property or joint family funds or that the earnings of the business were blended with the joint family estate, the business remains free and separate."

(emphasis supplied)

47. There are observations to the same effect in ***G. Narayana Raju (Dead) By His Legal Representative Vs. G. Chamaraju and Others***, AIR 1968 SC 1276 and ***Bhuru Mal Vs. Jagannath and Others***, AIR 1942 PC 13.

THERE IS A PRESUMPTION THAT EVERY HINDU FAMILY WHICH IS JOINT IN FOOD AND WORSHIP IS A HINDU JOINT FAMILY; BUT THERE IS NO PRESUMPTION THAT THE ESTATE IS JOINT OR THE PROPERTY IS THE HINDU JOINT FAMILY PROPERTY. THE PARTY WHO ASSERTS THAT THE PROPERTY IS HINDU JOINT FAMILY PROPERTY HAS TO PROVE IT.

48. In the opinion of this Court, there is a presumption that every Hindu Family which is joint in food and worship is a Joint Family; but there is no presumption that the Estate is joint or that the properties of the family members belong to the Hindu Joint Family. The party who asserts that the property is joint family property has to prove it.

49. Mulla in his Treatise Hindu Law states as under:-

"Para 231- Mulla's Hindu Law - 21st Edition

1) *Presumption that a joint family continues joint - Generally speaking, 'the normal state of every Hindu family is joint. Presumably every such family is joint in food, worship and estate.' In the absence of proof of division, such is the legal presumption.*

2) *No presumption that a joint family possesses joint property - There is no presumption that a family, because it is joint, possesses joint property or any property. When in a suit for partition, a party claims that any particular item of the property is joint family property, or when in a suit for a mortgage, a party contends that the property mortgaged is joint family property, the burden of proving it rests on the party asserting it.*

(emphasis supplied)

50. In ***Makhan Singh (Dead) By LRs. Vs. Kulwant Singh, (2007) 10 SCC 602***, the Apex Court has held as under:-

"7.In this connection the judgment in D.S. Lakshmaiah case becomes relevant. It had been observed that a property could not be presumed to be a joint Hindu family property merely because of the existence of a joint Hindu family and raised an ancillary question in the following terms: (SCC p. 314, para 7)

"7. The question to be determined in the present case is as to who is required to prove the nature of property whether it is joint Hindu family property or self-acquired property of the first appellant."

8. The query was answered in para 18 in the following terms: (SCC p. 317)

"18. The legal principle, therefore, is that there is no presumption of a property being joint family property only

on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.”

(emphasis supplied)

9. The High Court has also rightly observed that there was no presumption that the property owned by the members of the joint Hindu family could a fortiori be deemed to be of the same character and to prove such a status it had to be established by the propounder that a nucleus of joint Hindu family income was available and that the said property had been purchased from the said nucleus and that the burden to prove such a situation lay on the party, who so asserted it. The ratio of K.V. Narayanaswami Iyer case [AIR 1965 SC 289 : (1964) 7 SCR 490] is thus clearly applicable to the facts of the case. We are therefore in full agreement with the High Court on this aspect as well. From the above, it would be evident that the High Court has not made a simpliciter reappraisal of the evidence to arrive at conclusions different from those of the courts below, but has corrected an error as to the onus of proof on the existence or otherwise of a joint Hindu family property.

(emphasis supplied)

51. A Division Bench of this Court in **Ravi Shankar Sharma Vs. Kali Ram Sharma and Ors., 2014 I AD (Delhi) 609** has held that there is a body of authority to the effect that though the family might be joint, yet there is no presumption that property of someone is Hindu Undivided Family property.

HOWEVER IF SUFFICIENT NUCLEUS/INCOME OF HINDU JOINT FAMILY IS SHOWN AND PROPERTY HAD BEEN PURCHASED FROM THE SAID NUCLEUS, THEN EVEN IF OWNERSHIP STANDS IN THE NAME OF ONE OF ITS MEMBERS, IT CAN BE PRESUMED TO BE HINDU JOINT FAMILY PROPERTY

52. However, if sufficient nucleus/income of Hindu Joint Family is shown and property had been purchased from the said nucleus, then even if ownership stands in the name of one of its members, it can be presumed that property is owned by the Hindu Joint Family. Even in the judgment of ***Appasaheb Peerappa Chamdgade*** (supra) cited by the plaintiffs, there were Hindu Joint Family properties and the business was started from the Hindu Joint Family funds. The said judgment categorically holds that proof of nucleus/ sufficient income of a Hindu Joint Family as well as purchase from the said nucleus is a must.

53. In ***Ms. Ilaria Kapur Vs. Sh. Rakesh Kapur & Ors.*** (supra), it was also held that if nucleus whereof was generation of funds from Hindu joint family business for the purchase of properties, then it is immaterial whether the name of one of the family members appears on a document by which the said property was purchased by the joint family.

LAND GRANTED TO A DISPLACED PERSON UNDER THE PROVISIONS OF THE DISPLACED PERSONS (COMPENSATION AND REHABILITATION) ACT, 1954 IS IN THE NATURE OF A GRANT AND A GRANT IS ALWAYS SELF ACQUIRED

54. In the opinion of this Court, land granted to a displaced person under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 is in the nature of a grant and does not retain the characteristics of properties left behind in Pakistan. A grant is always self acquired. In ***Pohla***

Singh alias Pohla Ram (D) by LRs and Others Vs. State of Punjab and Others, (2004) 6 SCC 126, the Supreme Court held: “This clearly shows that a displaced person on account of his migration to India after partition did not get the same property which he had in the area which became Pakistan, but he got monetary compensation though it was possible that some property out of compensation pool could be sold or transferred to him out of the said compensation amount. The consequence is that the land which Dhanna Singh got in village Budhlada, in District Bhatinda is not the same land which he had got by way of military grant in Sind. It is an altogether different land purchased out of compensation amount which was payable to him or could have been transferred to him by setting off the valuation of the property against the compensation payable to him.”

55. ‘Grant’ according to Mulla on Hindu Law, 21st Edition, para 228 is :-

“228. Separate Property- Property acquired in any of the following ways is the separate property of the acquirer, it is called “Self-Acquired”, and is subject to the incidents mentioned in Para 222 above:-

1) xxxxx

2) xxxxx

3) Government Grant- Property granted by government to a member of a joint family is the separate property of the donee, unless it appears from the grant that it was intended for the benefit of the family.....”

(emphasis supplied)

56. The same has also been authoritatively concluded in Mayne’s Hindu Law and Usage, 16th Edition:-

“308. – Government Grant – Estate conferred by Government in the exercise of their sovereign power become the self-acquired property of the donee, whether such gifts are

absolutely new grants, or only the restoration to one member of the family of property previously held by another but confiscated, unless members of his family show that they treated it as joint family property.”

(emphasis supplied)

57. Consequently, a bare perusal of the above commentaries clearly shows that a Grant under Displaced Persons (Compensation and Rehabilitation) Act, 1954 is the ‘self-acquired property’ of the donee.

IN THE PRESENT PLAINT, THERE IS NO MENTION OF ANY IDENTIFIABLE PROPERTY EVER OWNED OR BUSINESS CARRIED OUT BY THE GRANDFATHER OF THE PLAINTIFFS’ i.e. R.P. GULATI. CONSEQUENTLY, THE ESSENTIAL AVERMENT WITH REGARD TO NUCLEUS, i.e., SINE QUA NON FOR HINDU JOINT FAMILY, IS LACKING IN THE PLAINT

58. In the present plaint, there is no mention of any identifiable property ever owned by the great grandfather of the plaintiffs’ i.e. R.P. Gulati. The income tax assessment order relied upon by learned senior counsel for the plaintiffs does not show that the alleged R.P. Gulati HUF existed or owned any asset. The assessment order only mentions about a shoe business carried out by Mr. R.P. Gulati – but there is no averment in the plaint to the said effect. There is also no averment that any specific property was owned by Mr. R.P. Gulati or that defendant No.1 succeeded to any specific estate/business of his father.

59. As there is no question of inheritance or succession, the essential averment with regard to nucleus, i.e., *sine qua non* for Hindu Joint family, is lacking in the plaint.

IN ANY EVENT, THE SUCCESSION HAVING OPENED UP ON THE DEATH OF GREAT-GRANDFATHER AFTER COMING INTO FORCE OF THE HINDU SUCCESSION ACT, 1956, THE GRANDFATHER OF THE PLAINTIFFS WOULD HOLD THE PROPERTY AS HIS PERSONAL / INDIVIDUAL PROPERTY.

60. In any event, Mr. R.P. Gulati, the great-grandfather of the plaintiffs, having died after coming into force of the Hindu Succession Act, 1956, the property inherited by the defendant no. 1, i.e., the grandfather of the plaintiffs, would be held by him as his personal / individual property and the plaintiff's father will not have any right or share therein. It was so held in *Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others*, (1986) 3 SCC 567, *Bhanwar Singh Vs. Puran and Others* (2008) 3 SCC 87, *Yudhishter Vs. Ashok Kumar*, (1987) 1 SCC 204, *Sheela Devi and Ors. Vs. Lal Chand & Anr.*, (2006) 8 SCC 581, *Sunny (Minor) & Anr. Vs. Sh. Raj Singh & Ors.*, 225 (2015) DLT 211 and *Surender Kumar Vs. Dhani Ram and Others* (supra). Consequently, the judgment of *Sanwal Das Vs. Kuremal & Ors.* (supra) offers no assistance to the plaintiffs.

THE PLAINTIFFS' RELIANCE ON ROHIT CHAUHAN'S JUDGMENT (SUPRA) FOR THE PROPOSITION THAT BY VIRTUE OF THE DEFENDANT NO.4'S BIRTH IN THE YEAR 1969, THE DEFENDANT NO.4 ACQUIRED A COPARCENARY RIGHT IN THE COPARCENARY OF LATE SH. R.P. GULATI IS MISPLACED INASMUCH AS IN SUBSEQUENT JUDGMENT OF UTTAM VS. SAUBHAG SINGH, (SUPRA), IT HAS BEEN SPECIFICALLY HELD THAT ROHIT CHAUHAN'S (SUPRA) JUDGMENT DID NOT TAKE INTO ACCOUNT MANDATORY SECTIONS 4, 8 AND 19 OF THE HINDU SUCCESSION ACT, 1956

61. In the opinion of this Court, the plaintiffs' reliance on *Rohit Chauhan's* judgment (supra) for the proposition that by virtue of the

defendant No.4's birth in the year 1969, the defendant No.4 acquired a coparcenary right in the coparcenary of late Sh. R.P. Gulati is misplaced inasmuch as in subsequent judgment of *Uttam Vs. Saubhag Singh* (supra), it has been specifically held by the Apex Court that *Rohit Chauhan's* (supra) judgment did not take into account Sections 4, 8 and 19 of the Act, 1956.

62. In *Uttam Vs. Saubhag Singh* (supra), the Supreme Court after relying upon its earlier decisions in *Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others* (supra), *Yudhishter Vs. Ashok Kumar* (supra) and *Bhanwar Singh v. Puran and Others* (supra) – which had not been noticed in *Rohit Chauhan's* case – held that when succession takes place under Section 8 of the Act, 1956, the entire joint family property loses its nature and the heirs succeed the deceased's interests as tenants in common in accordance with Section 19 of the Act, 1956. The Supreme Court emphasised that a conjoint reading of Sections 4, 8 and 19 shows that if succession takes place in accordance with Section 8, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they then hold the property as tenants in common and not as joint tenants as provided under Section 19 of the Act, 1956. The Supreme Court held that when the appellant's grandfather died in 1973 in the said case, his share in the joint family property was divided between his sons as individual shares and it no longer remained joint family property. According to the Apex Court, the appellant's father and uncles did not own any family property jointly that could be subjected to partition.

63. The Supreme Court in *Danamma alias Suman Surpur & Anr. Vs. Amar & Ors.* (supra) did not refer or rely upon *Rohit Chauhan* (supra). It

only deals with the interpretation and effect of the Hindu Succession (Amendment) Act, 2005 to Section 6 with regard to female coparcenors. Consequently, the said judgment offers no assistance to the plaintiffs.

64. Undoubtedly, the Supreme Court in *Shyam Narayan Prasad Vs. Krishna Prasad & Ors.*, (supra) has relied on and applied the judgment in *Rohit Chauhan* (supra), but the said judgment has been passed without taking into account the earlier binding judgment of *Uttam Vs. Saubhag Singh* (supra) wherein the judgment in *Rohit Chauhan Vs. Surinder Singh & Ors.* (supra) has been held to have overlooked mandatory statutory provisions. In the opinion of this Court as *Shyam Narayan Prasad vs. Krishna Prasad & Ors.* (supra) has been passed in ignorance of a binding authority, the rule of *stare decisis* is not applicable.

65. Consequently, as in the present case, Mr. R. P. Gulati died after coming into force of the Act, 1956 his properties / businesses, if any, devolved upon defendant No.1 as self-acquired property.

THOUGH THE PLAINTIFFS' MENTION THAT THIRTEEN PROPERTIES ARE IN EXISTENCE, YET THEY ARE NOT AVAILABLE OR CAPABLE FOR PARTITION

66. In the present case, out of the thirteen properties whose partition has been sought by the plaintiffs, four properties are owned by partnership concerns (wherein the defendant No.4 is not even a partner), three are owned either by public or private limited companies and balance six are owned either by the defendant No.1 or defendant No.5 as sole proprietors or exclusively or by defendant No.1 and defendant No.5 jointly. Out of the aforesaid six properties, two i.e. land in Mussoorie (Uttarakhand) and

godowns bearing No. G-61, LGF I and LGF II, East of Kailash, New Delhi, are in the possession of the defendant No. 4 and plaintiffs.

67. It is pertinent to mention that it is not the case of the plaintiffs that their uncle Mr. Manit Gulati (defendant No.3) has surviving interest in suit properties. If it were the case of the plaintiffs that all properties and business are Hindu Joint Family properties, then Mr. Manit Gulati would have a surviving share interest therein!

68. Accordingly, there is no question of the plaintiffs' seeking partition of the thirteen properties.

NOT ONLY THE AGREEMENT TO SELL AND RECEIPT OF PAYMENT OF C-117, EAST OF KAILASH, NEW DELHI ARE ADMITTEDLY IN FAVOUR OF THE DEFENDANT NO.1'S WIFE, NAMELY, DEFENDANT NO.5, BUT THE CONVEYANCE DEED EXECUTED BY THE DDA IS ALSO IN HER FAVOUR EXCLUSIVELY. THE PLAINTIFFS' CONTENTION THAT THE NAME OF THE WIFE OF DEFENDANT NO.1 WAS USED AS BENAMI WITH REGARD TO C-117, EAST OF KAILASH IS UNTENABLE IN LAW INASMUCH AS THE GRANDMOTHER OF THE PLAINTIFFS, I.E. DEFENDANT NO. 5, WAS ADMITTEDLY NOT A COPARCENER IN THE HINDU UNDIVIDED FAMILY. SAID PROPERTY WAS PURCHASED BY DEFENDANT NO.5, WHO IS AN INDEPENDENT INCOME TAX ASSESSEE HAVING RENTAL AND BUSINESS INCOME. CONSEQUENTLY, THE EXCEPTION CONTAINED IN SECTION 4(3) OF THE ACT, 1988, AS IT THEN STOOD, IS NOT ATTRACTED TO THE PRESENT CASE.

69. As far as C-117, East of Kailash, New Delhi is concerned, this Court finds that not only the Agreement to Sell and Receipt of payment are in favour of the defendant No. 1's wife, namely, defendant No. 5 but the Conveyance Deed executed by the DDA is also in her favour exclusively. In fact, the said property was purchased by defendant No.5, who is an

independent Income Tax Assessee admittedly having rental and business income. On the date of purchase, father of the plaintiffs (defendant No.4) was nine years old.

70. The Benami Transaction (Prohibition) Act, 1988 (for short "Act, 1988") states that property in the name of an individual has to be taken as owned by that individual and no claim to such property is maintainable as per Section 4 (1) of the Act, 1988. Consequently, the defendant No. 5 is the absolute owner of the said property. A Coordinate Bench of this Court in ***Surender Kumar Vs. Dhani Ram and Others*** (supra) has held as under:-

“11.....the Benami Transaction (Prohibition) Act (hereinafter referred to as ‘the Benami Act’) and which Act states that property in the name of an individual has to be taken as owned by that individual and no claim to such property is maintainable as per Section 4(1) of the Benami Act on the ground that monies have come from the person who claims right in the property though title deeds of the property are not in the name of such person.”

(emphasis supplied)

71. It is pertinent to mention that unlike in ***Ms. Ilaria Kapur Vs. Sh. Rakesh Kapur & Ors.*** (supra), it is the defendant No. 5’s case in the present matter, that she was an earning member of the family and owned self-acquired properties.

72. The contention of the plaintiffs that the name of the wife of defendant No.1 was used as benami with regard to C-117, East of Kailash, New Delhi by the defendant Nos.1, 3 and 4 for the benefit of the family and the coparcenary, as envisaged under the exception in Section 4(3) of the Act, 1988, is untenable in law inasmuch as the grandmother of the plaintiffs, i.e. defendant No. 5 being a female could not be a coparcener prior to 2005. In

fact, it has been admitted in the plaint that defendant No.5 was not a coparcener in the Hindu Joint family and had no share in it on the date of purchase of the said property. (Para 2(xv) of the plaint).

73. Also, as defendant No. 5 was not a coparcener, the doctrine of blending cannot be invoked with regard to property bearing C-117, East of Kailash, New Delhi. The Supreme Court in ***Mallesappa Bandeppa Desai and Another Vs. Desai Mallappa Alias Mallesappa and Another***, AIR 1961 SC 1268 has held as under:-

“11. The question which falls for our decision is: Does this principle apply in regard to a property held by a Hindu female as a limited owner? In our opinion, it is difficult to answer this question in favour of the appellants. The rule of blending postulates that a coparcener who is interested in the coparcenary property and who owns separate property of his own may by deliberate and intentional conduct treat his separate property as forming part of the coparcenary property. If it appears that property which is separately acquired has been deliberately and voluntarily thrown by the owner into the joint stock with the clear intention of abandoning his claim on the said property and with the object of assimilating it to the joint family property, then the said property becomes a part of the joint family estate; in other words, the separate property of a coparcener loses its separate character by reason of the owner's conduct and get thrown into the common stock of which it becomes a part. This doctrine, therefore, inevitably postulates that the owner of the separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. There can be no doubt that the conduct on which a plea of blending is based must clearly and unequivocally show the intention of the owner of the separate property to convert his property into an item of joint family property. A mere intention to benefit the members of the family by allowing them the use of the income coming from the said property may not

necessarily be enough to justify an inference of blending; but the basis of the doctrine is the existence of coparcenary and coparcenary property as well as the existence of the separate property of a coparcener. How this doctrine can be applied to the case of a Hindu female who has acquired immovable property from her father as a limited owner it is difficult to understand. Such a Hindu female is not a coparcener and as such has no interest in coparcenary property. She holds the property as a limited owner, and on her death the property has to devolve on the next reversioner. Under Hindu law it is open to a limited owner like a Hindu female succeeding to her mother's estate as in Madras, or a Hindu widow succeeding to her husband's estate, to efface herself and accelerate the reversion by surrender; but, as is well known, surrender has to be effected according to the rules recognised in that behalf. A Hindu female owning a limited estate cannot circumvent the rules of surrender and allow the members of her husband's family to treat her limited estate as part of the joint property belonging to the said family. On first principles such a result would be inconsistent with the basic notion of blending and the basic character of a limited owner's title to the property held by her. This aspect of the matter has apparently not been argued before the courts below and has not been considered by them. Thus, if the doctrine of blending cannot be invoked in regard to the property held by Channamma, the appellants' claim in respect of the said property can and must be rejected on this preliminary ground alone."

(emphasis supplied)

74. Accordingly, the exception contained in Section 4(3) of the Act, 1988, as it then stood, is not attracted to the present case.
75. Consequently, in view of the Act, 1988, defendant No. 5 is the lawful absolute owner of C-117, East of Kailash, New Delhi, to the exclusion of plaintiffs and the defendant No. 4.

IN ANY EVENT, AFTER ENACTMENT OF SECTION 14 OF HINDU SUCCESSION ACT, 1956, THE LEGISLATURE HAS DONE AWAY WITH THE CONCEPT OF LIMITED OWNERSHIP IN RESPECT OF PROPERTY OWNED BY HINDU FEMALE ALL TOGETHER.

76. In fact, the Supreme Court in ***Jagannathan Pillai Vs. Kunjithapadam Pillai & Ors.*** 1987 (2) SCC 572 has held that by enacting Section 14 of the Act, 1956, the legislature has done away with the concept of limited ownership in respect of property owned by Hindu female all together. To obviate hair-splitting, the legislature has made it abundantly clear that whatever be the property possessed by a Hindu female, it will be of absolute ownership and not of limited ownership notwithstanding the position obtaining under the traditional Hindu law.

77. In ***Vankamamidi Venkata Subba Rao Vs. Chatlapalli Setharamaratna Ranganayakamma***, 1997 (5) SCC 460, the Apex Court held that it is a well settled legal position that if the right of a Hindu woman under any instrument is in recognition of pre-existing right, the limited right though prescribed under the instrument, gets enlarged into an absolute right by operation of Section 14(1) of the Act, 1956.

78. In ***Gangamma & Ors. Vs. G. Nagarathnamma & Ors.***, (2009) 15 SCC 756, the Supreme Court has held as under:-

“4. The suit properties consist of both agricultural lands and urban properties and the plaint case is that they are ancestral properties belonging to the joint family. The further plaint case is that though some of the properties stand in the name of the first defendant, they were bought benami in her name by the late Ganganna out of the income from agricultural lands and the income of the first plaintiff's husband who was working as an accountant in a private firm and drawing salary. He also had a

leather business and had earning from running a taxi. Thus he was contributing seven to eight thousand rupees every month to the family and out of such income the suit properties were purchased.

5. The first defendant being a housewife had no income to purchase properties. However, later on relationship between Plaintiff 1 and her husband and Defendant 1 became strained and Plaintiff 1 and her husband had to leave the ancestral house. The plaint case is that out of the properties those at Items 1 to 4 are joint family properties.

9. Section 14(1) of the Hindu Succession Act, 1956 (hereinafter referred to as "the Act") has a bearing on the issue. As the properties at Items 1 and 2 are recorded in the name of the appellant, in the absence of any evidence to the contrary in this case, the appellant by operation of Section 14(1) of the said Act is the full owner of those properties. In the facts of this case discussed above it has to be accepted that those properties are not joint properties but the appellant is the sole owner of those properties.

10. The principle laid down in Section 14(1) of the said Act has been read by courts in a very comprehensive manner since the said Act overrides the old law on stridhana in respect of properties possessed by a female Hindu. In Eramma v. Veerupana Ramaswami, J. speaking for the Court held that Section 14(1) of the Act contemplates that a female Hindu, who in the absence of the said provision would have been a limited owner of the property, will now become full owner by virtue of the said section. Such female Hindu will have all powers of disposition to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder.

11. Again, in Punithavalli Ammal v. Minor Ramalingam] a three-Judge Bench of this Court reiterated the position that the said Act has overriding effect and confers full ownership on Hindu female and made it very clear that rights conferred under Section 14(1) to a Hindu female are not restricted or limited by any rule of Hindu Law. In the opinion of the Court

in Punithavalli [(1970) 1 SCC 570 : AIR 1970 SC 1730] the said section makes a clear departure from all texts of Hindu laws and rules and those texts and rules cannot be used for circumventing the plain meaning of Section 14(1) of the said Act.

(emphasis supplied)

SINCE ADMITTEDLY THERE HAVE BEEN FOUR PARTITIONS, THE SHARE OF THE COPARCENERS MUST BE DEEMED TO HAVE BEEN DETERMINED AND THE PROPERTIES CEASED TO BE COPARCENARY PROPERTIES

79. The essence of coparcenary under Mitakshara Law is unity of ownership and once there is a partition, unity of coparcenary is destroyed/ dissolved. The Supreme Court in **Hardeo Rai** (supra) has held as under:-

“22. For the purpose of assigning one's interest in the property, it was not necessary that partition by metes and bounds amongst the coparceners must take place. When an intention is expressed to partition the coparcenary property, the share of each of the coparceners becomes clear and ascertainable. Once the share of a coparcener is determined, it ceases to be a coparcenary property. The parties in such an event would not possess the property as “joint tenants” but as “tenants-in-common”. The decision of this Court in SBI [(1969) 2 SCC 33 : AIR 1969 SC 1330] , therefore, is not applicable to the present case.

23. Where a coparcener takes definite share in the property, he is owner of that share and as such he can alienate the same by sale or mortgage in the same manner as he can dispose of his separate property.”

(emphasis supplied)

80. In the opinion of this Court, once partition of a coparcenary takes place, the coparcenary dissolves and shares of members get ascertained.

Consequently, on a partition, no coparcenery survives and it comes to an end. Thereafter branch-wise partition is not possible under Hindu Law.

HINDU LAW DOES NOT RECOGNISE SOME OF THE MEMBERS OF A JOINT FAMILY BELONGING TO DIFFERENT BRANCHES AS A COPARCENARY UNIT. IN THE PRESENT CASE, THE UNCLES (WITHOUT THEIR CHILDREN) AND TWO NEPHEWS (DEFENDANT NOS. 4 AND 3) DID NOT BELONG TO THE SAME BRANCH. THE ACQUISITIONS MADE BY THEM EVEN IF TAKEN AS JOINTLY, COULD NOT BE TREATED AS A HINDU JOINT FAMILY PROPERTY.

81. In law there cannot be a coparcenary between different branches of the family. Coparcenary is a creature of Hindu Law and cannot be created by agreements of parties, except in the case of reunion.

82. In the present case, the uncles and two nephews (defendant nos. 4 and 3) did not belong to the same branch. The acquisitions made by them even if taken as jointly, could not be treated as a joint family property. The Supreme Court in ***Bhagwan Dayal Vs. Mst Reoti Devi, AIR 1962 SC 287*** has held as under:-

“The principle of joint tenancy is unknown to Hindu law except in the case of the joint property of an undivided Hindu family governed by the mitakshara law.”

The legal position may be stated thus: Coparcenary is a creature of Hindu law and cannot be created by agreement of parties except in the case of reunion. It is a corporate body or a family unit. The law also recognizes a branch of the family as a subordinate corporate body. The said family unit, whether the larger one or the subordinate one, can acquire, hold and dispose of family property subject to the limitations laid down by law. Ordinarily, the manager, or by consent, express or implied, of the members of the family, any other member or members can carry on business or acquire property, subject to the limitations laid down by the said law, for or on behalf of the family. Such

business or property would be the business or property of the family. The identity of the members of the family is not completely lost in the family. One or more members of that family can start a business or acquire property without the aid of the joint family property, but such business or acquisition would be his or their acquisition. The business so started or property so acquired can be thrown into the common stock or blended with the joint family property in which case the said property becomes the estate of the joint family. But he or they need not do so, in which case the said property would be his or their self-acquisition, and succession to such property would be governed not by the law of joint family but only by the law of inheritance. In such a case, if a property was jointly acquired by them, it would not be governed by the law of joint family; for Hindu law does not recognize some of the members of a joint family belonging to different branches, or even to a single branch, as a corporate unit. Therefore, the rights inter se between the members who have acquired the said property would be subject to the terms of the agreement whereunder it was acquired. The concept of joint tenancy known to English law with the right of survivorship is unknown to Hindu law except in regard to cases specially recognized by it. In the present case, the uncle and the two nephews did not belong to the same branch. The acquisitions made by them jointly could not be impressed with the incidents of joint family property. They can only be co-sharers or co-tenants, with the result that their properties passed by inheritance and not by survivorship.

(emphasis supplied)

83. The Supreme Court in ***Kalyani (Dead) By LRs. Vs. Narayanan and Others, 1980 Supp. SCC 298*** has held as under:-

“24. A further submission that there was partition branchwise is unknown to Mitakshara law and is wholly untenable. In Mayne's Hindu Law, 11th Edn., p. 347, law is thus stated:

“So long as a family remains an undivided family, two or more members of it, whether they be members of different branches or of one and the same branch of the family, can have no legal existence as a separate independent unit; but all the members of a branch, or of a sub-branch, can form a distinct and separate corporate unit within the larger corporate family and hold property as such. Such property will be joint family property of the members of the branch inter se, but will be separate property of that branch in relation to the larger family.”

The principle of joint tenancy is unknown to Hindu law except in the case of the joint property of an undivided Hindu family governed by the Mitakshara law.”

(emphasis supplied)

THE COMPANY LAW BOARD PROCEEDING IS NOT MENTIONED IN THE PLAINT AND CANNOT BE RELIED UPON.

84. As far as the reliance placed on the reply to Company petition being Co.Pet.6/1993 before the Company Law Board is concerned, there is no averment in the plaint with regard to the said pleading. Consequently, the Company Law Board proceeding is wholly irrelevant and cannot be relied upon for deciding the present case. In any event, the expression ‘family business’ does not mean that there is an Hindu Joint Family or coparcenary in existence. It is well settled law that even an admission by a party is not enough to hold the property to be ancestral or coparcenary. [See **Saroja Vs. Santhil Kumar and Others, (2011) 11 SCC 483; C.N. Ramappa Gowda Vs. C.C. Chandregowda (Dead) by LRs. and Another, (2012) 5 SCC 265; Molar and Ors. Vs. Smt. Santo and Ors., PLR (1968) 70 P&H 510; Gurjant Singh Major and Others Vs. Surjit Singh and Others, PLR (2004)**

138 P&H 469; and Matu Ram (Deceased) thru Lrs Vs. Kartar Singh and other, PLR (2004) 137 P&H 569.]

85. Further, a limited company cannot be a Hindu Joint Family business but can be a quasi partnership in rare and special circumstances, i.e., equality in shareholding, restriction on transfer of shareholding, conversion of prior partnership, bank accounts being operated by all, agreement for equal participation in management or an understanding that a company would be managed on partnership principles [See: ***Sangramsinh P.Gaekwad & Ors. Vs. Shantadevi P.Gaekwad (Dead) Through LRs & Ors., (2005) 11 SCC 314*** and ***Ebrahimi Vs. Westbourne Galleries Ltd. & Ors.,(1972) 2 ALL ER 492***]. If partners happen to be some or the other members of a family or where most of them are females, it will not be a Hindu Joint Family business. Also if averments in the reply to Co.Pet.6/1993 are believed to be true and correct, then the averments in the plaint with regard to third partition in April, 1989 would be false!

HUF BANK ACCOUNT IS NOT RELATABLE TO ANY PROPERTY. THEREFORE, IRRELEVANT

86. As regards the HUF Bank account opened on 22nd November, 1985, it is not relatable to any property. It is an admitted position that the Public as well as the Private Limited Companies, Partnership Firms and Family Members of the defendant No.1 had been filing independent Income Tax Returns. Therefore, the said HUF Bank account is wholly irrelevant.

87. In any event, showing in Income Tax Return, a HUF Bank account is meaningless unless the sufficient income is shown from nucleus of Hindu Joint Family Properties. The consistent legal position is that once there is no

sufficient nucleus in Savings Bank Account, as in the present case, it will not make a Business/Property as a Hindu Joint Family property. Some of the relevant judgments in this context are reproduced hereinbelow:-

A. *Justice Shanti Sarup Dewan, Chief Justice (Retired) & Anr. Vs. Union Territory, Chandigarh & Ors., LPA No.1007 of 2013*

wherein it has been held as under:-

“20.The crux of the dispute, as stated above, was found to be house in Chandigarh which was claimed by appellant No.1 to be self acquired property while respondent No.7 was of the opinion that the same was H.U.F. property as it was shown as such in the Income Tax Returns by appellant No.1 and thus he was of the view that his sisters had no right in the property....”

xxx

xxx

xxx

35.What is the right of respondent No.7 and his family members to insist on occupying a portion of the house of appellant No.1 especially when the sale-deed is registered in the name of appellant No.1 in his individual name. Merely stating that it is a joint Hindu family property would not suffice. In order to establish that the property belongs to joint family, it must be established that a joint family had a sufficient nucleus at the time of its acquisition....”

B. *Jupudi Venkata Vijaya Bhaskar Vs. Jupudi Kesava Rao (died) & Ors., AIR 1994 AP 134*, where it has been held as under:-

“30.By declaring his status in the Income Tax and Wealth-tax returns as “Hindu Undivided Family”, it could not be said that the first defendant had blended his private properties with that of the joint family properties....”

31. Declaration of status in the Income Tax returns is not always decisive of the real status of the individual....”

C. Madan Lal Vs. Controller of Estate Duty, [1969] 74 ITR 84(Raj)

where it has been held as under:-

“20.In our opinion, in the absence of any other circumstances, the filing of returns and getting his property taxed on the basis of joint family property were not sufficient to show an intention of abandonment of his claim on the part of Sukhdoo. It has been observed in Govind Narain Mathur v. Mohini Devi ILR [1960] Raj 1219 that a statement in connection with the assessment of Income Tax that certain property was joint family property may be made for the purpose of getting some advantage under the law relating to Income Tax and that it could not be evidence of any unequivocal intention on the part of the assesses to waive his interest in the self acquired property....”

(emphasis supplied)

BALANCE OF CONVENIENCE IS ENTIRELY IN FAVOUR OF THE DEFENDANT NOS. 1 AND 5

88. This Court is of the view that the balance of convenience is entirely in favour of the defendant nos. 1 and 5 as they have been out of possession of their own house (C-117, East of Kailash, New Delhi) since 2010. It is pertinent to mention that after construction of the said house in 1978, the defendant nos. 1 and 5 had been in occupation of the same for the thirty-two years. This Court is of the view that no sane person would voluntarily walk out of its own property in their ‘twilight years’ if they were not harassed or subjected to atrocities. In fact, it is the case of defendants No.1, 2 and 5 that they had been subject to a number of atrocities.

89. Since the defendant No. 4 and plaintiffs are in exclusive possession of all cars of family as well as the factory and warehouse (Serial Nos.(x) and (xiii) of Schedule to the plaint) which are yielding rental income, this Court

is of the view that even if the plaintiffs have to vacate the aforesaid property, they would not suffer any irreparable harm and injury.

CONCLUSION

90. To conclude, this Court is of the view that a meaningful reading of the present plaint, in the present case, does not disclose a cause of action. There is no averment that any specific property was owned by Mr. R.P. Gulati or that defendant No.1 succeeded to any specific estate/business of his father. It is also settled law that land granted to a displaced person is in the nature of grant and a grant is always self acquired. Consequently, the essential averment with regard to nucleus, i.e., *sine qua non* for Hindu Joint Family, is lacking in the plaint.

91. In any event, Mr. R.P. Gulati, the great-grandfather of the plaintiffs having died after coming into force of the Hindu Succession Act, 1956, the property/business inherited by the defendant no. 1, i.e., grandfather of the plaintiffs, would be held by him as his personal/individual property and the father of the plaintiffs would have no right or share therein.

92. Also, as Order 6 Rule 4 CPC is attracted to suits where plaintiff claims that a coparcenary or Hindu Joint Family exists, (inasmuch as after coming into force of the Act, 1956, there is no presumption as to the existence of an HUF), detailed facts have to be averred. However, no averments have been made by factual references *qua* each property claimed to be a Hindu Joint Family property.

93. Further, even if the averments in the plaint are to be believed, then it only shows that thirteen properties are in existence, but it does not mean that they are available or capable for partition. After all, properties

owned by partnership firms or Public or Private Limited Companies cannot be said to belong to a coparcenary.

94. Not only the agreement to sell and receipt of payment of C-117, East of Kailash, New Delhi are admittedly in favour of the defendant no.1's wife, namely, defendant no.5, but the conveyance deed executed by the DDA is also in her favour exclusively. The plaintiffs' contention that the name of the wife of defendant no.1 was used as benami with regard to C-117, East of Kailash is untenable in law inasmuch as the grandmother of the plaintiffs, i.e., defendant no. 5, was admittedly not a coparcener in the Hindu undivided family. The said property was purchased by defendant no.5, who is an independent income tax assessee having rental and business income.

95. In any event, after enactment of section 14 of the Act, 1956, the Legislature has done away with the concept of limited ownership in respect of property owned by Hindu female all together. Consequently, the exception contained in Section 4(3) of the Act, 1988, as it then stood, is not attracted to the present case.

96. It is further settled law that the Hindu law does not recognise some of the members of a joint family belonging to different branches as a coparcenary unit. In the present case, the uncles (without their children) and two nephews (defendant nos. 4 and 3) did not belong to the same branch. The acquisitions made by them even if taken as jointly, cannot be treated to be Hindu joint family property.

97. The plaintiffs' reliance on **Rohit Chauhan's** judgment (supra) for the proposition that by virtue of the defendant No.4's birth in the year 1969 a coparcenary was created, is misplaced inasmuch as in a subsequent judgment of **Uttam vs. Saubhag Singh** (supra), it has been specifically held

that ***Rohit Chauhan's*** (supra) judgment did not take into account mandatory statutory provisions like Sections 4, 8 and 19 of the Act, 1956.

98. Even if it is presumed that on the birth of defendant No.4 in 1969, a coparcenary was created, then also the same came to an end by virtue of partition. The essence of coparcenary under Mitakshara Law is unity of ownership and once there is a partition, unity of coparcenary is destroyed / dissolved. Since admittedly there have been four partitions in the present case, the share of the coparceners is deemed to have been determined and the properties ceased to be coparcenary properties. Consequently, even if it is presumed that the plaint discloses a cause of action, the same is barred by law.

99. Keeping in view the aforesaid findings, the present plaint is rejected and the present application is allowed. The interim order dated 02nd December, 2013 is vacated.

FEBRUARY 04, 2019

js/rn/rs

MANMOHAN, J